

### **REMARKS**

In response to the Restriction Requirement dated January 8, 2007, Applicant provisionally elects, *with traverse*, to prosecute Group I, identified in the Restriction Requirement as claims 1-23. In view of the traversal, Applicant respectfully declines to cancel the non-elected claims. However, if such non-elected claims are withdrawn by the Examiner, Applicant respectfully reserves the right to later re-introduce such claims in this or in one or more divisional or continuation patent applications. Applicant has added claims 37-38. As a result, claims 1-38 are now pending in this patent application.

#### **Grounds For Traversal**

The Restriction Requirement states:

Inventions II and I are related as process and apparatus for its practice. the inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the apparatus does not require an adjustment of frequency range, but an adjustment of gain at particular frequencies using the same range.

(Restriction Requirement at 2.) To overcome this asserted basis of restriction, Applicant has amended independent method claims 24 and 29 to depend from new independent method claim 37, which also does not require an adjustment of frequency range, but which can also be performed using an adjustment of gain at particular frequencies using the same range, as asserted by the Examiner. Therefore, Applicant respectfully submits that the scope of the independent method claim 37 is believed to be substantially commensurate with the scope of the independent apparatus claim 1, thereby overcoming the asserted basis of restriction. Moreover, Applicant has also added a linking claim 38, such that the method claims 24-37 must be examined together with the system and apparatus claims 1-23 and 38. *See* MPEP § 809.

Moreover, Applicant respectfully submits that the Restriction Requirement has provided no objective evidence of record that one of ordinary skill in the art would regard “adjustment of a frequency range” to be distinct from “adjustment of gain at particular frequencies using the same range.” Applicant respectfully requests that the Examiner provide objective evidence of record to establish this point or, alternatively, if the Examiner intends to take Official Notice of this

point without entering such objective evidence into the record, Applicant respectfully requests that the Examiner provide an affidavit asserting the same as required by MPEP § 2144.03.

Furthermore, Applicant respectfully submits that the Restriction Requirement has arbitrarily and capriciously classified Group I into class 600, subclass 509 (defined as “Methods and apparatus for detecting changes in electrical potential of the heart during its beat”) and Group II into class 607, subclass 9 (defined “Subject matter for applying a relatively low energy level in, on, or near the heart to regulate the rate at which the heart beats to or near a desired rate or for monitoring and testing of such subject matter”). Applicant respectfully submits that Group II could just as easily have been classified into class 600, subclass 509 as Group I, and that the asserted classification of Group II appears to be less appropriate than such coherent classification together with Group I. Therefore, Applicant respectfully traverses the Restriction Requirement’s assertion that “the inventions have acquired a separate status in the art due to their recognized divergent subject matter” as being unsupported by any objective evidence of record.

Lastly, Applicant respectfully submits that the Restriction Requirement has not provided any objective evidence of record that there would be a “serious burden” on the examiner if restriction is not required.

In sum, Applicant respectfully requests withdrawal of the Restriction Requirement and coherent expedient examination of the claims of Group II together with the claims of provisionally elected Group I.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6951 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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By their Representatives,

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Date

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By

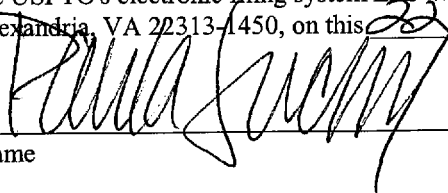


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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EES-Web, and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 22 day of January, 2007.

Name



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